

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MAUREEN PATTERSON-MONTGOMERY,

Plaintiff,

v.

No. CIV 01-444 WJ/DJS


CITY OF ALBUQUERQUE, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER DENYING
DEFENDANT LEHOCKY'S MOTION FOR PARTIAL SUMMARY JUDGMENT IV

THIS MATTER comes before the Court on Defendant Officer Lehocky's Motion for Partial Summary Judgment No. IV: Dismissal of Plaintiff's Fourth Amendment Claim that the Use of a Police Service Dog to Bite a Suspect Constitutes the Use of Deadly Force [Docket No. 96]. In his motion, Officer Lehocky seeks a determination of the Court that the use of a police service dog to bite Plaintiff was not deadly force. Plaintiff's response points out that Plaintiff's Complaint is properly read to state a claim for the use of excessive force; none of the claims is entitled "Use of Deadly Force." Plaintiff further states that Lehocky's motion attacks a claim that simply does not exist. The Court agrees and finds that Officer Lehocky's motion seeks to dismiss a claim that has not been made.

IT IS THEREFORE ORDERED that Defendant Lehocky's Motion for Partial Summary Judgment IV [Docket No. 96] is hereby DENIED.


UNITED STATES DISTRICT JUDGE